

**Deposition Designations for:
KENNETH R. FINSTAD
March 22, 1999**

Deposition Designation Key

**Arrowood = Arrowood Indem. Co.
f/k/a Royal Indem. Co. (Light Green)**

BNSF = BNSF Railway Co. (Pink)

Certain Plan Objectors “CPO” = Government Employees Insurance Co.; Republic Insurance Co. n/k/a Starr Indemnity and Liability Co.; OneBeacon America Insurance Co.; Seaton Insurance Co.; Fireman’s Fund Insurance Co.; Allianz S.p.A. f/k/a Riunione Adriatica Di Sicurta; and Allianz SE f/k/a Allianz Aktiengesellschaft; Maryland Casualty Co.; Zurich Insurance Co.; and Zurich International (Bermuda) Ltd.; Continental Casualty Co. and Continental Insurance Co. and related subsidiaries and affiliates; Federal Insurance Co.; and AXA Belgium as successor to Royal Belge SA (Orange)

CNA = Continental Cas. Co & Continental Ins. Co. (Red)

**FFIC = Fireman Funds Ins. Co. (Green)
FFIC SC = Fireman Funds Ins. Co. “Surety Claims” (Green)**

GR = Government Employees Ins. Co.; Republic Ins. Co. n/k/a Starr Indemnity and Liability Co.

Libby = Libby Claimants (Black)

OBS = OneBeacon America Ins. Co. and Seaton Ins. Co. (Brown)

PP = Plan Proponents (Blue)

Montana = State of Montana (Magenta)

Travelers = Travelers Cas. and Surety Cos. (Purple)

UCC & BLG = Unsecured Creditors’ Committee & Bank Lenders Group (Lavender)

**AFNE = Assume Fact Not in
Evidence
AO = Attorney Objection
BE = Best Evidence
Cum. = Cumulative
Ctr = Counter Designation
Ctr-Ctr = Counter-Counter
ET = Expert Testimony
F = Foundation
408 = Violation of FRE 408
H = Hearsay
IH - Incomplete Hypothetical**

**L = Leading
LA = Legal Argument
LC = Legal Conclusion
LPK - Lacks Personal Knowledge
LO = Seeking Legal Opinion
NT = Not Testimony
Obj: = Objection
R = Relevance
S = Speculative
UP = Unfairly Prejudicial under Rule 403
V = Vague**

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1 MONTANA NINETEENTH JUDICIAL DISTRICT COURT
2 LINCOLN COUNTY

3
4 Cause No. DV-98-139

5 KENNETH R. FINSTAD and EDITH)
6 L. FINSTAD, husband and wife,)
7 Plaintiffs,)

8 -vs-)

9 W.R. GRACE & CO.-Conn., a)
10 Connecticut corporation, EARL)
11 D. LOVICK and DOES I-IV,)
12 Defendants.)

13
14 DEPOSITION OF
15 KENNETH R. FINSTAD
16 (On Behalf of Defendants.)
17
18
19
20
21

22 McGarvey, Heberling, Sullivan & McGarvey
23 745 South Main Street
24 Kalispell, Montana
25 Monday, March 22, 1999 -- 8:00 a.m.

26 Reported by Beth Gilman, RPR and Notary Public for
27 the State of Montana, County of Flathead

HEDMAN, ASA & GILMAN REPORTING - 752-5751/752-3334
P. O. BOX 394 -- KALISPELL, MONTANA

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1 Q. Did you use any other type of safety
2 devices in any of these jobs prior to working for W.

3 R. Grace?

4 A. Gloves and hard-toe shoes.

5 Q. Hard-toe boots?

6 A. Right.

7 Q. Hard hat?

8 A. No. In the woods, yes.

9 Q. How about safety goggles?

10 A. No.

Libby

11 Q. The document states that you started at W.

12 R. Grace in 1965; is that right?

13 A. Yes.

14 Q. What was your first job there?

15 A. Construction, in the construction
16 department.

17 Q. And what did you do in the construction
18 department?

19 A. We just -- Whatever came up, cleanup,
20 digging ditches if we had to or -- Sometimes we went
21 up to the mine and helped when they was getting
22 ready to blast.

23 Q. How long did you --

24 A. The beltline cleanup and things.

25 Q. Excuse me. I'm sorry. Beltline cleanup?

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P. O. BOX 394 -- KALISPELL, MONTANA

Libby

- 1 A. Yeah, sweeping up in the mill once in
2 awhile.
- 3 Q. Did you work in or around a lot of dust
4 when you were in the construction department?
- 5 A. Sometimes, yes.
- 6 Q. And when you say sometimes, was it in a
7 particular place or area?
- 8 A. Well, in the mill itself it was all dust.
9 There was dust all outside too, but not near as much
10 as inside.
- 11 Q. And when you say the mill, you mean the
12 old dry mill?
- 13 A. Dry mill, yes.
- 14 Q. What types of things would you do when you
15 were in the construction department inside the old
16 dry mill?
- 17 A. Cleanup work, sweeping.
- 18 Q. And that was when you were in the
19 construction department?
- 20 A. Yes.
- 21 Q. How often would you say that you were in
22 the dry mill doing cleanup, sweeping?
- 23 A. Oh, maybe two or three times a week.
- 24 Q. For how long at a period of time?
- 25 A. Sometimes all day.

Libby

1 Q. When you were in the construction
2 department then sweeping or cleaning up in the dry
3 mill, was that probably the duty that you did the
4 most often, sweeping in the dry mill?

5 A. No. It varied from, you know, day-to-day
6 what we had to do. Like if they had a building
7 project of some type going on, well, some of us
8 would be doing that and then others would be kind
9 of -- would just be kind of spread out doing
10 different jobs.

11 Q. How long were you in the construction
12 department?

13 A. Probably a couple months I suppose, maybe
14 a little longer.

15 Q. Then what did you do?

16 A. I bid on the skip job.

17 Q. And were bids awarded based on seniority?

18 A. No, not necessarily. They didn't really
19 seem to be, because most generally if you bid on a
20 job, you -- you know, you usually got it, you know,
21 if someone else hadn't been there for a longer
22 period of time. I would imagine it would probably
23 be a seniority rule type thing, you know.

24 Q. What's a skip operator? How would you
25 describe it?

Libby

1 A. Well, you got the two skip cars, they pull
2 underneath these bins and you dump the ore, the
3 dried ore, into the -- or the dried product,
4 vermiculite, into the cars and they go down the hill
5 and dump in bins down there. And you just keep
6 going back and forth all day or all night, whichever
7 shift you're on, you know.

8 Q. And which portion would you operate, the
9 moving the cars or the part that would dump the ore
10 into the cars?

11 A. All of it.

12 Q. All of it.

13 A. Yeah. The bins were -- The gates on the
14 bins were air-activated and then the cars were --
15 you run those back and forth up and down the hill.
16 They were on a cable-type system.

17 Q. Was there a lot of dust in and around this
18 job?

19 A. Yes.

20 Q. This was a less labor-intensive job?

21 A. Right.

22 Q. Than the other?

23 A. Right.

24 Q. How long did you do that?

25 A. Oh, I imagine a year anyway, maybe a

Libby

- 1 little over.
- 2 Q. And then what did you do?
- 3 A. I bid on top floor operator job.
- 4 Q. And did you get that?
- 5 A. Yes.
- 6 Q. And what's a top floor operator job?
- 7 A. They make sure everything is running right
- 8 on the top three floors. You got hammer mills or
- 9 roller mills and screens and things you got to keep
- 10 track of and make sure everything is doing what it's
- 11 supposed to do.
- 12 Q. Did you work eight-hour shifts?
- 13 A. Yes.
- 14 Q. And this was in the dry mill?
- 15 A. Yes.
- 16 Q. Was this the dustiest job of the three
- 17 that you had had?
- 18 A. Yes.
- 19 Q. How long did you do that?
- 20 A. Pretty close to a year. Probably nine,
- 21 ten months, I suppose.
- 22 Q. Did you supervise anybody when you were
- 23 the top floor operator?
- 24 A. No.
- 25 Q. Did you ever supervise anybody up there at

Libby

1 First of all, I would like to talk about
2 your health right now; okay? As you sit here today,
3 how would you describe your general health?
4 A. Poor.
5 Q. What type of health symptoms or problems
6 do you suffer from right now?
7 A. Shortness of breath.
8 Q. And when you say shortness of breath,
9 could you elaborate on that? What do you mean by
10 that?
11 A. If I get real active and I run out of air
12 and my oxygen level drops way down.
13 Q. Do you ever pass out or get dizzy?
14 A. Yes.
15 Q. You've actually passed out?
16 A. Yes, from coughing.
17 Q. How many times?
18 A. I don't know. Quite a few.
19 Q. Like over a dozen?
20 A. Oh, yeah.
21 Q. Do you actually fall to the floor?
22 A. Yes.
23 Q. And how long are you typically out?
24 A. Oh, maybe a minute or two. Sometimes
25 less.

Libby

1 Q. What types of activities usually cause you
2 to become short of breath?

3 A. Oh, walking a lot, just getting aggressive
4 doing something. If I try to move appliances
5 around, things like that.

6 Q. So lifting things?

7 A. Yes.

8 Q. Do you exercise?

9 A. I walk.

10 Q. How far do you walk?

11 A. Oh, here lately not very far. The weather
12 has been bad, but we usually try to walk -- We go
13 around the green belt. That's about maybe a mile.

14 Q. Do you try to do that everyday?

15 A. Yes, weather permitting.

16 Q. And can you usually walk this mile without
17 becoming too short of breath?

18 A. As long as I have my air tank.

19 Q. When you say air tank, you bring an air
20 tank with you?

21 A. Yes.

22 Q. You wheel it behind you?

23 A. I pack it with me on my shoulders.

24 Q. Do you draw on the air tank as you're
25 walking or do you just use it if you need it?

Libby

1 A. It's computerized. It gives me a shot of
2 air every once in awhile.

3 Q. So you actually put it right on your
4 mouth?

5 A. Yes, on -- Yes.

6 Q. Who prescribed that for you?

7 A. Dr. Mosley.

8 Q. When is the last time you tried to walk
9 the mile without the air tank?

10 A. I haven't.

11 Q. You didn't start walking until after you
12 got the air tank?

13 A. Right.

14 Q. And do you exercise by walking on Dr.
15 Mosley's recommendation, or request?

16 A. Yeah. I'm trying to lose weight.

17 Q. Have you lost weight?

18 A. Yes.

19 Q. How much?

20 A. I think about 10 pounds. I think 10, 12
21 pounds I think they said last time.

22 Q. And when you say 10 to 12 pounds, since
23 when?

24 A. Probably about a month ago, two months ago
25 maybe. It was before I had my last oxygen loss test

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1 door at any time of the day and night, you know,
2 with something wrong. We live right in the court,
3 so --

4 Q. Okay. How long have you managed the
5 trailer court?

6 A. Since '92.

7 Q. Do you get paid a salary for that?

8 A. Yes.

9 Q. How much?

10 A. Five hundred.

11 Q. A month?

12 A. Yes.

Libby

13 Q. How often would you say that you run out
14 of air to the point of passing out?

15 A. Just when I start coughing real hard.

16 Q. But on like, say, an average month, how
17 many times have you coughed so hard that you would
18 pass out?

19 A. Two or three probably.

20 Q. And when is the first time that you can
21 recall this happening?

22 A. Couple years ago, about two years ago.

23 Q. Do you take any medication for the
24 coughing?

25 A. No.

Libby

1 Q. Are you taking any other medication right
2 now?

3 A. Yes.

4 Q. What medication?

5 A. I take blood pressure pills, gout pills
6 and a diuretic and an aspirin and potassium.

7 Q. Do you take any of these for the
8 asbestosis that's been diagnosed?

9 A. No.

10 Q. All your medication is for other ailments?

11 A. Yes. And I take an inhaler too, and they
12 give me that for my breathing.

13 Q. We talked about shortness of breath. What
14 other symptoms do you have as you sit here today
15 that cause you health concerns?

16 A. Just the coughing and the not being able
17 to do the things I usually do, or at the rate I used
18 to do them.

19 Q. And when you say coughing, how often do
20 you have coughing problems?

21 A. All the time.

22 Q. Do you find that any part of the day is
23 particularly troublesome in terms of coughing?

24 A. Night.

25 Q. So does your coughing get worse over the

Libby

- 1 day?
- 2 A. No. It's off and on. Just depends on how
- 3 much I exert myself is how much I cough.
- 4 Q. So the more you exert, the more you cough?
- 5 A. Right. The exertion brings on the
- 6 coughing.
- 7 Q. When you were living in Rock Springs,
- 8 Wyoming, did you have a family doctor?
- 9 A. Yes.
- 10 Q. Who was that?
- 11 A. It was Dr. Harrison.
- 12 Q. And he's in Rock Springs?
- 13 A. He's passed away.
- 14 Q. But he was in Rock Springs?
- 15 A. Yes.
- 16 Q. Do you remember his first name?
- 17 A. No, I don't.
- 18 Q. Do you remember seeing any other health
- 19 care providers while you were living in Rock
- 20 Springs?
- 21 A. Dr. Eile.
- 22 Q. Doctor who?
- 23 A. Eile.
- 24 Q. How do you spell that?
- 25 A. I think it's E-I-L-E, I think. I'm not

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1 Q. Do you recall your wife trying to quit
2 smoking up until a month ago? Ever tried
3 previously?

4 A. One time.

5 Q. Do you remember when that was?

6 A. Probably about eighty -- '87 or '88
7 maybe. Somewhere in that area.

8 Q. Did she go through a particular smoking --
9 anti-smoking, stop-smoking program?

10 A. No.

11 Q. Do you remember how long she made it?

12 A. About four hours. My kids begged me to go
13 get her a pack of cigarettes.

14 Q. Kenneth, how long -- I think you told me,
15 and I apologize, but how long have you had the
16 oxygen?

17 A. About a month.

18 Q. And that's what you walk with?

19 A. Yes.

20 Q. And you hadn't tried walking a mile
21 without that prior to getting that oxygen?

22 A. I can't do it, no.

Libby [23 Q. When you were working up at the mine, W.R.
24 Grace mine, Kenneth, were you living by yourself at
25 that time?

Libby

1 A. Yes. Well, no. There was me and another
2 guy living together. We were both working there.

3 Q. Did you have an apartment?

4 A. Trailer.

5 Q. Did you accumulate a lot of dust on you
6 during your shift?

7 A. Yes.

8 Q. Did you try to clean it off before going
9 home?

10 A. Tried to blow it off with the air hose.

11 Q. Did most of the guys try to do that?

12 A. Yes.

13 Q. Before you would get on the bus?

14 A. Yeah.

15 Q. And did that help quite a bit?

16 A. Well, just kind of like just drove it more
17 into you more than anything else, but it got the
18 outside cover off pretty much.

19 Q. And was that pretty much your routine?
20 You would have someone blow you off with the air
21 hose before going home everyday?

22 A. Yeah.

23 Q. Did you wear the same clothes to work any
24 particular number of days?

25 A. No. I changed everyday.

Libby

1 Q. Did you have any system of shaking your
2 clothes or otherwise trying to get rid of dust
3 before you brought your dirty clothes into the
4 apartment?

5 A. Just shake them and then, you know, get
6 what we could out and then put them in the wash
7 machine.

8 Q. Do you recall the place where you were
9 living -- Did you say it was an apartment?

10 A. Trailer house, little trailer.

11 Q. Trailer house. Do you remember the
12 trailer house being particularly dusty?

13 A. The whole town of Libby has got dust, all
14 kinds of dust.

15 Q. Do you recall having a specific problem
16 with the dust you would bring from the mine on your
17 clothes?

18 A. No. I've -- Just didn't pay any attention
19 to it.

20 Q. But you didn't change clothes up at the
21 mine or anything like that?

22 A. No. No.

23 Q. And you would change clothes everyday?

24 A. Right, at home, yes.

25 Q. Kenneth, were you aware of the union